interest on the difference (if any) between the amount of their offer and the amount of the compensation eventually fixed.

The decision to which I have come is unfortunately not identical with that arrived at in *Syed Ahmad's* case. That decision is a recent one; it has not been acted upon to any very great extent; and it is, technically, not binding on me. In so far as I differ from some of the conclusions of Mr. Justice a' Beckett Terrell, however, I do so with great diffidence, but emboldened to that course by the knowledge that some of the arguments submitted to me, and many of the cases cited to me (including the decision of the Privy Council in the *Inglewood* case) were not before him when *Syed Ahmad's* case was argued in Chambers and also by the fact that I have reason to believe that had those cases been cited to him his decision would have been different.

It will always be open to the Singapore Improvement Trust if they are embarrassed by these conflicting decisions to obtain a conclusive opinion from a higher Court as to the meaning and construction of this somewhat obscure and complicated legislation.

The orders and declarations that will be made by this Court on the prayers as framed in this originating summons are as follows:—

(1) (*a*) The Defendants ought to pay to the Plaintiffs interest on the compensation moneys payable by the defendants to the plaintiffs in respect of the acquisition for back-lane purposes of the land and premises known as 14 North Canal Road, from the 27th June, 1935, being the date when the relevant order was made under section 144 of Ordinance 135 (Municipal) was registered by the defendants, as is contended by the plaintiffs.

(*b*) The interest so payable is payable at a reasonable rate which is hereby fixed at the rate of 5 per centum per annum.

(*c*) Such interest is not payable under section 105 (A) (now section 110) of the Singapore Improvement Ordinance but in accordance with general equitable principles.

(2) That the Plaintiffs' costs be taxed and paid by the defendants on the higher scale.

Order Accordingly.

Solicitors for Alkaff & Co.—*Allen & Gledhill.*

Solicitors for Singapore Improvement Trust:—*Braddell Brothers.*

[ORIGINAL CRIMINAL JURISDICTION]

ADRIAN CLARK, J.

September 10, 1936.

REX v. LEE PRINTING CO., LTD.

[SINGAPORE ASSIZES (5th) CASE No. 7 of 1936]

Criminal Procedure Code, ss. 148, 151 and 156—Commitment for Trial of Limited Company.

A Magistrate can properly commit a Limited Company to stand its trial at assizes.

TRIAL BY JURY.

One of several Defendants was a limited company and on its behalf a preliminary objection was taken that its committal for trial was a nullity.

S. B. Tan for the Company.

E. N. Taylor, Deputy Public Prosecutor, for the Crown.

The arguments sufficiently appear from the judgment.

Cur. Ad. Vult.

ADRIAN CLARK, J.—In this case Mr. S. B. Tan appearing for the accused Company raised a preliminary objection, before plea, that the committal for trial of the Company was a nullity.

The learned Deputy Public Prosecutor raised a counter objection that the order for committal was an order pronounced by a Police Court within the meaning of section 295 of the Criminal Procedure Code (Ordinance No. 121), that no appeal had been preferred against that order and that it therefore stood and was binding on the accused.

If Mr. Tan's submission is sound, however, the objection goes to the jurisdiction and the point can be taken at any time. If the committal is a nullity the Company is not properly before this Court so as to be triable by it.

Mr. Tan's point was that a Magistrate, in committing for trial, must act under section 156 of Ordinance No. 121 (I cite the references to the Criminal Procedure Code as it existed at the date of committal) and that the accused Company had not been, and could not be, committed by warrant to custody—nor given bail—until and during trial.

Mr. Tan submitted that the law in this Colony is the same as it was in England before the passing of the Criminal Justice Act of 1925. The learned Deputy Public Prosecutor, *contra*, referred to section 5 of Ordinance No. 121 but I doubt whether that section can engraft into our Code the provisions of section 33 of the English Act of 1925 and, in any case, the learned Magistrate did not purport to act under that section nor to make any order corresponding to its provisions.

The offence in respect of which a charge has been presented against the Company in this Court is one under section 11 of the Merchandise Marks Ordinance (Ordinance No. 161).

That Ordinance, by its definition of the word "Person" in section 2 and further by inference to be drawn from the provisions of section 34, clearly demonstrates the intention of the Legislature that Limited Companies should be amenable to the penal provisions of the Ordinance.

Section 11 of the Ordinance provides punishment (inter alia) with imprisonment which may extend to three years. In accordance with the provisions of section 11 of Ordinance No. 121 the only Court which can try the offence is therefore the High Court since the Merchandise Marks Ordinance mentions no Court for the trial of any offence which it creates with the exception (see section 35) of offences under sections 16 and 17 of the Ordinance.

It follows that a Limited Company is liable to be prosecuted for an offence under section 11 of the Merchandise Marks Ordinance and that the High Court is the only Court with jurisdiction to try the offence.

How then is the Limited Company to be brought to trial?

The case of *Reg.* v. *Tunkoo Mohamed Said & Ors.*, 2 Kyshe 18 decided in 1840 lays down the proposition that a plea to the jurisdiction of the Court is bad if it does not show in what other Court the offence could be lawfully tried. Here Mr. Tan's submission, if correct, might result in the intentions of the Legislature being completely frustrated since his objection does not rest on any circumstance peculiar to this case but amounts to a submission that no Limited Company can ever be committed for trial to the High Court.

When this point was put to him he confessed himself unable to reply until I myself suggested the possibility of arguing that the combined operation of the provisions of section 10 (2) of the Courts Ordinance and of section 41 of the Criminal Procedure Code might permit of a complaint being made direct to the High Court, whereupon the High Court would issue its summons to the Limited Company to appear before it, to be tried without preliminary enquiry (which appears nowhere in the Criminal Procedure Code to be made a *sine qua non* to proceedings in the High Court) but before a jury nevertheless. (Section 184 of the Code).

This suggestion being thrown out to him Mr. Tan seized it and made it his own but rather as a drowning man clutches at a straw. The only alternative solution, namely, that the Attorney-General must proceed by information under section 385 (now section 403) of the Code, was not put forward. I think the presumption should be that if the Legislature intended that Corporations should be tried it intended them to be tried according to the procedure usual in the case of ordinary individuals. This presumption is heightened by the provisions of section 34 of the Ordinance.

In support of his submission Mr. Tan cited *Rex* v. *Daily Mirror Newspapers*; *Rex* v. *Glover*, (1922) 2 K.B. 530 which distinguished without overruling the decision in *Rex* v. *Ascanio Puck & Co., Ltd.*, 29 T.L.R. 11.

That Corporations could be tried on indictment has long been decided in cases under English Law (cf. for example, cases cited in *Reg.* v. *Tyler etc. Coy.*, (1891) 2 Q.B. 593.)

That they can appear by attorney is also beyond doubt [*cf. Reg.* v. *Birmingham etc. Railway*, (1892) 3 Q.B. D. 233 and *Rex* v. *Ascanio Puck & Co., Ltd.* (*supra*).]

The case of *Rex* v. *Daily Mirror* cited by Mr. Tan deals with provisions of the English law of criminal procedure which is not the same as ours and moreover, that decision is not binding on this Court. If our law was identical with that of England I am not sure that I should be prepared to follow that decision as laying down sound law. I think, however, that our Criminal Procedure Code differs from English law sufficiently to allow of the ruling in the *Daily Mirror* case being distinguished without my going so far as to differ from it. To begin with, the Grant Juries (Suspension) Act 1917 has provided alternative methods of procedure which could have been used in the case of Limited Companies without any technical argument arising therefrom.

Moreover, as I read section 25 of the Indictable Offences Act 1848, at the end of the case for the prosecution the Petty Sessions Court if it decided to commit for trial makes only one order, an order, by warrant, committing the accused to gaol to be there safely kept until thence delivered in due course of law.

Here the procedure is not quite the same. The Police Court makes two separate orders.

Under sections 148 and 151 when the Magistrate is of opinion that the evidence justifies his committing the accused for trial then, after framing the charge and explaining it and "cautioning" the accused, the Magistrate makes the *first* order which is an order committing the accused for trial before the High Court.

This "committal" is entered on the record and forms part of it.

Various steps in procedure may be taken after this formal committal before the accused person leaves the Court and it is after these steps have been taken, and under an entirely different section that the *second* order is made, that is, an order, by warrant, under section 156 of the Code, committing the accused to custody until and during the trial (unless he is granted bail).

The two orders appear to me to be quite distinct.

The first is a judicial determination on the evidence [cf. *R.* v. *Blackeney*; *Stone's* Justices Manual 68th ed. 40] which amounts to an order that the accused shall stand his trial before the High Court.

The second is merely a ministerial order, consequential on the first providing for the due appearance of the accused at the Assizes.

The marginal note to section 151 reads "order of commitment" and that to section 156 "custody of accused pending trial" and although I am aware that section 2 of the Code provides that the marginal notes of the Code shall not affect its construction they do in this case at least, in my opinion, correctly describe the effect of its provisions.

Now legal provisions in respect of criminal procedure are peremptory, but only, as I understand the decisions, where compliance with them is a condition precedent to some right, or liability, or jurisdiction, being acquired.

Here the order of commitment, under sections 148 and 151, is what is necessary to found the right of the Public Prosecutor to present his indictment and the jurisdiction of this Court to try the charges which he presents. That right and that jurisdiction cannot depend on the fact that the accused person has been in prison or on bail while awaiting his trial.

In this case the Magistrate duly made his order of commitment under sections 148 and 151 and, without protest, or objection, the Company, through its solicitor, reserved its defence and stated that its counsel would call witnesses on its behalf at its trial.

It is not necessary to commit a Limited Company to prison nor to give it bail. It cannot run away. If it does not appear at the Assizes it can be dealt with for contempt of the order committing it to stand its trial.

Mr. Tan has not suggested that the Company is not in this case amenable to trial and punishment under the Merchandise Marks Ordinance. Section 11 provides a punishment of fine as an alternative to imprisonment (which would be impossible punishment in the case of a corporation) and I have already pointed out that sections 2 and 34 of the Merchandise Marks Ordinance make clear the intention of the Legislature that Limited Companies shall be amenable to criminal proceedings under that Ordinance. [Compare *Allard* v. *Selfridge & Co. Ld.*, (1925) 1 K.B. 129 and *Starey* v. *Chelworth Gunpowder Co. Ltd.*, 24 Q.B.D. 90.]

In my opinion the objection raised by Mr. Tan fails; this Limited Company has been properly committed to stand its trial in this Court and must attend and plead and stand its trial accordingly through an advocate or other duly accredited Agent.

Judgment Accordingly.

Solicitors for the Company:—*Donaldson & Burkinshaw.*

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.